

Immigration Related Responsibilities When Hiring an Employee And Completing Form I-9

INTRODUCTION

All U.S. employers are required to examine and verify the eligibility of each employee to be lawfully employed in the United States, regardless of the immigration status of the employee. This includes U.S. citizens, permanent residents of the United States, and temporary foreign workers as well as anyone to whom a job is offered. The main tool used to verify an employee's status and to show that an employer has complied with the law is the Form I-9, Employment Eligibility Verification. This form must be completed for every employee.

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[Information about E-Verify – to help you verify that a newly hired employee is eligible to work in the United States](#)

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Information about the Form I-9

INTRODUCTION

All employers must verify that each individual, who is hired, is eligible for employment in the United States, even if the individual is a United States citizen. Failure to do so can result in severe penalties against the employer. To verify that an individual is eligible for employment, the employer must complete a copy of Form I-9, "Employment Eligibility Verification," for each employee. A revised version of Form I-9 with a revision date of June 5, 2007, is now the only version valid for use by employers. Effective December 26, 2007, employers who fail to use this revised form may incur fines and penalties.

The employee is required to complete Section 1 of Form I-9. The employer is required to complete the remainder of the form and to retain it for possible inspection in the future. When completing Form I-9, the employer must verify both the identity and the employment eligibility of the individual.

The instructions on Form I-9 indicate the documents that an employer may accept in order to establish the identity and eligibility of the individual. The types of documents fall under three lists.

List A includes documents that establish both identity and employment eligibility.

List B includes documents that establish identity only.

List C includes documents that establish employment eligibility only.

WHAT INFORMATION ARE YOU SEEKING? (PLEASE CHOOSE ONE BELOW)

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What is Form I-9?

Form I-9 is the Employment Eligibility Verification Form issued by the Department of Homeland Security, U.S. Citizenship and Immigration Services. By law all U.S. employers are responsible for completion and retention of Forms I-9 for all U.S. citizen as well as non-U.S. citizen employees hired for employment in the U.S. after November 6, 1986. This process, which includes an employee's attestation of work authorization and an employer's review of the documents presented by that employee to demonstrate identity and work authorization, is the means by which U.S. employers document that they have verified whether a newly hired employee is eligible to work in the U.S. The employee and employer both must provide information and signatures as indicated on the form.

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How do I obtain the Form I-9?

The Form I-9 may be downloaded from the U.S. Citizenship and Immigration Services Internet website at <http://www.uscis.gov>.

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Can I reproduce the Form I-9?

Employers are permitted to electronically generate the Form I-9, provided that the resulting form is legible, the content and sequence of the data elements and instructions match those on the official Department of Homeland Security document (Form I-9, revision dates 11/21/91 and 05/31/05, OMB Nos. 1115-0136 and 1615-0047) and the paper is of retention quality. Copies of the Form I-9 may be reproduced in either double-sided or single-sided format.

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Who needs to complete a Form I-9?

Every newly hired employee at a company must complete the Form I-9, including citizens and nationals of the United States. Both the employer and the employee are responsible for completing the Form I-9.

All employers in the United States are required to examine all of their employees' work authorization statuses, regardless of whether the employee is a U.S. citizen, permanent resident, or temporary foreign worker.

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Who is responsible for completing the different sections of the Form I-9?

The employee is obligated to complete [Section 1](#), Employee Information and Verification, of the Form I-9 at the time of hire.

The employer is obligated, after physically examining the documents presented by the employee, to complete [Section 2](#), Employer Review and Verification, and [Section 3](#), Updating and Re-verification (if applicable), of the Form I-9.

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Can the Form I-9 be filled out before the job is offered?

An individual should not complete a Form I-9 for an employer until after he or she has accepted the position.

If a company has an individual complete the Form I-9 but no offer is extended, then the company could be faced with a claim of discrimination. This is due to the fact that the Form I-9 asks about citizenship and alienage, and it requires the production of documents that might indicate national origin.

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When should Section 1 be completed?

Section one of the Form I-9 must be completed and signed by every newly hired employee on or before the date of hire, regardless of his or her immigration status. The employee must attest that he or she is a U.S. citizen, lawful permanent resident, or is otherwise authorized to work for the employer in the United States. The employee must present the employer with documentation establishing identity and employment eligibility in accordance with the List of Acceptable Documents on the Form I-9.

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When should Section 3 be completed?

Employers should complete Section 3 of the Form I-9 when updating and re-verifying the employment authorization of an employee whose previous valid authorization has expired. Section 3 does not apply to employees who are U.S. citizens or permanent residents. Section 3 should only be completed when the employee denotes that he or she is an alien authorized to work until a date certain in Section 1 of the Form I-9. For example, when a USCIS-issued employment authorization document is scheduled to expire, the employer must re-verify that the employee has renewed his/her authorization to work and has a valid document from either List A or one from both List B and List C in his/her possession. The employee can choose which documents to provide.

Except for employees who are U.S. citizens or permanent residents, employers should re-verify the employment authorization of each employee who has presented evidence of work authorization that contains an expiration date. Employers **CANNOT** specify which document(s) they will accept from an employee. Only the employee can choose the acceptable document(s) to provide.

Section three of the Form I-9 should only be completed when choice three in Section one is selected. It should not be used if the person is a permanent resident or a U.S. citizen.

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When should Section 2 be completed?

Section two of the Form I-9 must be completed and signed by every employer within three business days of the hire. If the employment relationship will last less than three days, then section two must be completed at the time of hire. Section two must be completed and signed by every employer whether he or she employs thousands of employees or only one. The employer must ask each employee to provide documents that prove both his/her identity and his/her authorization to work. There are three lists on the back of the Form I-9 that sets forth acceptable documentation:

- List A (documentation establishing both identity and authorization to work)
- List B (documentation establishing only identity)
- List C (documentation establishing only authorization to work)

The employee may elect to provide one document from List A, or two documents, one from List B and one from List C. Only the employee can choose the acceptable document(s) to provide.

Note: Certain documents shown as acceptable on the Form I-9 are no longer acceptable. Even though listed on the Form I-9, the content of the Form I-9 has not been updated since regulation changes removed the following documents from the list of acceptable identity and work authorization documents:

- Form I-151, Alien Registration Receipt Card;
- Naturalization Certificate;
- Certificate of U.S. Citizenship;
- Unexpired Reentry Permit; and
- Unexpired Refugee Travel Document.

Certain other documents have been created and placed in the regulations as acceptable even though not indicated as such on the Form I-9. Those Forms are:

- Form I-766, Employment Authorization Document (EAD);
- Form I-94 issued to Refugees – for the purpose of establishing initial employment eligibility; and
- Form I-94 issued to Asylees with “employment authorized” indicated on the reverse side - for the purpose of establishing employment eligibility only.

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Can I tell a potential employee which document(s) he or she must bring for verification?

No, an employer cannot tell an employee what documents to present for I-9 purposes. Employers may, however, direct the employee to the list of acceptable documents shown on the back of Form I-9 as well as the special instructions regarding the most current list of acceptable documents contained on the USCIS website at www.USCIS.gov. If an employee presents documents not appearing on the list, an employer should ask for additional proof of identity and/or employment authorization.

WARNING: An employer who requests specific documents, such as a driver's license and a Social Security card, may be charged with document abuse and fined accordingly.

The important thing to remember is that a citizen and a non-citizen must be treated identically in completing the Form I-9.

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How do I know if a document is genuine or false?

An employer is not required to know with absolute certainty whether a document is genuine or false. The law merely requires that an employer examine the original of the document (not a photocopy) and make a good faith determination that the document:

- Appears to relate to the employee;
- Appears to be genuine; and
- Is an acceptable document for the Form I-9.

WARNING: An employer must refrain from overzealous scrutiny of documents. The rejection of a questionable document that later proves to be genuine may result in a violation of the anti-discrimination provisions of the Immigration laws of the U.S. Also, an employer who singles out a particular nationality or ethnic group for a higher level of scrutiny may face sanctions under the law.

The rejection of a document that later proves to be genuine could result in a violation of the anti-discrimination provisions of immigration law.

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Can I confirm an employee's work authorization by contacting the government?

ONLY officially registered participants in the Department of Homeland Security's automated verification system can receive confirmation of work authorization of a newly hired employee by contacting the government. This program is called E-Verify. E-Verify is an online application to verify the employment eligibility of newly hired employees, regardless of citizenship.

If you want more information about E-Verify, click [here](#).

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Can photocopies be accepted?

No, photocopies of documents cannot be accepted for Form I-9 purposes. Employees must present original documents.

The only exception is that a newly hired employee may present a certified copy of a birth certificate issued by a state, county, municipal authority or outlying possession of the United States bearing an official seal.

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What if the person we hire only has temporary work authorization?

An employee that has been issued temporary work authorization must produce proof of continued work authorization before the date of expiration. Employers should try to remind the employee 90 days prior to the expiration of his or her current work authorization.

Except for employees who are U.S. citizens or permanent residents, employers should re-verify the employment authorization of each employee who has presented evidence of work authorization that contains an expiration date.

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What if my employee was granted work authorization through TPS?

Unfortunately, applications for an employment authorization document may not be processed in time. Such was the case for some Hondurans and Nicaraguans in the year 2000. In that situation, some employers were terminating these individuals even though their TPS status and work authorization was extended. In response to this problem, CIS published a notice in the Federal Register and issued a news release in an attempt to inform the public.

Therefore, employers with employees who have been granted work authorization via TPS must be careful to monitor expiration dates and stay up-to-date with employees' work authorization status as well as notices published by CIS in the Federal Register or on the uscis.gov website. Failure to do so could result in sanctions from continued hiring of an employee who has lost work authorization or the inappropriate firing of an employee who continues to have work authorization.

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Who is required to do the re-verification of an employee's work authorization?

All employers are responsible for re-verifying the employee's work authorization.

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What is the new portability provision for an H-1B visa holder?

These new portability provisions allow a nonimmigrant alien, who was previously issued an H-1B visa or who was otherwise accorded H-1B status, to begin working for a new H-1B employer as soon as the new employer files an H-1B petition for the alien, rather than having to wait for USCIS approval.

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If I have filed a petition for an extension of status for my employee, can I continue employing him or her?

Regulations (8 C.F.R. section 274A.12(b)(20)), authorize employment with the same employer for up to 240 days after a non-frivolous petition for extension of status is filed. The regulation limits the 240-day rule to the following non-immigrant visa classifications: A-3, E, G-5, H, I, J-1, L-1, O-1, O-2, P-1, P-2, P-3, R, and TN.

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How would an employer fulfill the Form I-9 verification requirement under the 240-day rule?

Regulations (8 C.F.R. section 274A.12(b)(20)), authorize employment with the same employer for up to 240 days after a non-frivolous petition for extension of status is filed. While the employment is authorized, there is no provision on the Form I-9 for the documentation of this fact. Therefore, employers may want to follow whatever documentation procedures they use for the 240-day grace period.

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Does this new portability provision affect the way the company completes the Form I-9?

The Form I-9 contains no provision for this authorization. Therefore, employers should follow the documentation procedures they currently use for an extension of this type. As an example, the employer could attach a copy of the receipt notice for the filed H-1B petition along with a copy of the alien's I-94 to the Form I-9 kept on file or the employer could write "covered by the H-1B portability provision" on the Form I-9.

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Are there any exceptions to completing the Form I-9?

Yes. Independent contractors or those persons who were hired prior to November 6, 1986 are exempted from completing the Form I-9.

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What is remuneration?

Remuneration is anything of value given in exchange for labor or services rendered by an employee, including food and lodging.

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How can I obtain the Form I-9 handbook?

Copies of the Form I-9 Handbook can be ordered by calling (800) 870-3676. The Form I-9 Handbook may be downloaded from the USCIS website at www.uscis.gov

The Form M-274, Employer Handbook, contains instructions for completing Form I-9, Employment Eligibility Verification.

- Please read the instructions carefully and note that many changes have occurred in the regulations since the publication of the handbook. Therefore, the handbook may not be all-inclusive or up-to-date.

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Can I do something to help my employee get a Social Security card?

An employer who wishes to assist an employee in getting a Social Security card may do so by obtaining the **Form SS-5, “Application for a Social Security Card.”** The Form SS-5 includes the instructions for completing the application and documents needed.

The Form SS-5 can be obtained by:

- Downloading via the Internet at <http://www.ssa.gov/>; or
- Calling the Social Security Administration at 1-800-772-1213 to request.

Note: The Social Security Administration has improved the security features of Social Security Cards. The new security features are reflected in the October 2007 version of the card. However, all prior versions of the Social Security Card are still valid and may continue to be used.

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What is an EAD?

Certain foreign nationals who are temporarily in the U.S. may file a Form I-765, *Application for Employment Authorization*, to request an Employment Authorization Document (EAD), which authorizes them to work legally in the U.S. during the time the EAD is valid.

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How long is the validity period of an EAD?

Foreign nationals usually apply for an EAD when they apply for adjustment of status to that of permanent resident. Therefore, they usually file Form I-765, *Application for Employment Authorization*, together with Form I-485, *Application to Register Permanent Residence or Adjust Status*, with USCIS.

Initial EAD filings will generally receive an EAD that is valid for one year because they are usually submitted with the Form I-485 that can only be filed when there is an immigrant visa number available to the foreign national. However, when their visa availability date retrogresses (i.e., when demand for visa numbers exceeds forecasted supply), and a visa number is no longer available, then the foreign national may receive an EAD that is valid for two years.

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Information about documents that are acceptable to establish both identity and employment eligibility

INTRODUCTION

The following documents are acceptable evidence to establish both identity and employment eligibility so long as they relate to the individual who is presenting the document:

- A United States passport or U.S. Passport Card;
- An expired US passport is also acceptable;
- An Alien Registration Receipt Card or a Form I-551 Lawful Permanent Resident Card;
- An unexpired foreign passport that contains a temporary I-551 stamp; or
- An unexpired Employment Authorization Document, issued by USCIS, that contains a photograph and one of the following documents: Form I-766, Form I-688, Form I-688A, or Form I-688B.

In certain cases, USCIS may grant the individual an immigration status of E, H, L, O, P, or Q. For such an individual, an unexpired foreign passport is acceptable proof of identity and employment eligibility if the individual also has a Form I-94 "Arrival/Departure Record" in his possession that bears the same name as his passport. The Form I-94 must exhibit an endorsement of the alien's nonimmigrant status, the period of the endorsement cannot have expired, and the proposed employment cannot be in conflict with any restrictions or limitations that are indicated on Form I-94.

Frequently Asked Questions

- ❑ [Which List A documents are acceptable?](#)
- ❑ [What documents can an F-1 OPT student, who has filed either an H-1B petition or a STEM OPT extension, show to satisfy Form I-9 requirements?](#)
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Which List A documents are acceptable?

The following documents are acceptable evidence for both identity and employment eligibility so long as they relate to the individual who is presenting the document:

- A U.S. passport (An expired U.S. passport is also acceptable) or a U.S. Passport Card;
- An Alien Registration Receipt Card or a Permanent Resident Card, Form I-551;
- A Temporary Resident Card, Form I-688;
- An unexpired foreign passport that contains a Temporary I-551 stamp or an unexpired foreign passport that contains Form I-94, indicating that the employee is a nonimmigrant who is authorized to work for a specific employer incident to the employee's status;
- An unexpired Employment Authorization Document (EAD) containing a photograph. There are several versions of this document including: Form I-766, Form I-688, Form I-688A, and Form I-688B; and
- The citizens of the Republic of the Marshall Islands (RMI) and the Federated States of Micronesia (FSM) can use an un-expired FSM passport with un-expired documentation showing admission under the Compact of Free Association (CFA) as valid proof of work authorization.

Note: Citizens of the Republic of Palau must possess a valid Employment Authorization Document (EAD) before working in the United States. (Although citizens of the FSM and RMI no longer need an Employment Authorization Document (EAD) to work in the United States, the Compact did not include Palau. Citizens of Palau are still required to obtain an EAD as evidence of their eligibility to work in the United States).

In certain cases, USCIS may grant the individual a nonimmigrant immigration status of E, H, L, O, P, Q, or TN. For such an individual, an unexpired foreign passport is acceptable proof of identity and employment eligibility if the individual also has a Form I-94 "Arrival/Departure Record" in his possession that bears the same name as his passport. The Form I-94 must exhibit an endorsement of the alien's nonimmigrant status, the period of the endorsement cannot have expired, and the proposed employment cannot be in conflict with any restrictions or limitations that are indicated on the Form I-94. Such a combination of documents is only acceptable when the individual is authorized to work for a specific employer incident to his or her status.

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What documentation can an F-1 OPT student, who has filed either an H-1B petition or a STEM OPT extension, show to satisfy Form I-9 requirements?

F-1 students who have filed a STEM OPT extension:

An F-1 student who has timely filed Form I-765 for a 17-month STEM extension of his/her post-completion OPT, and whose EAD (Form I-766) has expired, is authorized to continue working while the Form I-765 application is pending for a period not to exceed 180 days.

The following documents constitute the equivalent of an unexpired EAD under List A, # 4 of the Form I-9:

- The expired Form I-766 EAD;
- The USCIS receipt notice (Form I-797, Notice of Action) showing a timely filing of the Form I-765 extension application; and
- Form I-20 updated to show that the DSO recommended the STEM extension for a work authorization period beginning on the date after the expiration of the EAD.

This combination of documents satisfies the Form I-9 document presentation requirements for 180 days (or less if the application is denied beforehand). If the 17-month STEM extension is approved, the student should receive a new Form I-766 EAD within the 180-day period.

F-1 OPT students who have filed an H-1B petition:

The Designated School Official (DSO) will issue a “cap-gap” Form I-20 which will show on page 3 that the student’s employment authorization has been extended and the effective dates.

The following documents constitute the equivalent of an unexpired EAD under List A, # 4 of the Form I-9:

- The expired Form I-766 EAD;
- A “cap-gap” Form I-20 endorsed to show that the student’s employment authorization is still valid; and
- The USCIS receipt notice (Form I-797, Notice of Action) showing receipt of the H-1B petition.

This combination of documents satisfies the Form I-9 document presentation requirements until September 30th, or until the date of the denial of the H-1B petition. If the receipt notice has not yet been issued, the expired EAD and the “cap-gap” Form I-20 are sufficient. This combination of documents satisfies the Form I-9 until the expiration date noted on the “cap-gap” Form I-20, but not later than September 30th. If the student presents a “cap-gap” Form I-20 without a receipt notice, the employer must re-verify upon the expiration date noted on the Form I-20. The student may present another “cap-gap” Form I-20 indicating continued employment authorization to satisfy the re-verification requirement.

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What if an employee does not have a document from List A?

Employers **CANNOT** specify which document(s) they will accept from an employee. If an employee does not present a document from List A, he or she must provide the employer with one document from List B and one from List C. Only the employee can choose the acceptable document(s) to provide.

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Information about documents that are acceptable to establish identity only

INTRODUCTION

Certain documents are acceptable evidence only to establish identity for individuals 16 years of age or older. If a prospective employee shows an employer one of the following documents, the individual must also show the employer a separate document that establishes employment eligibility.

Acceptable documents to establish identity include:

- A driver's license or identification card containing a photograph, issued by a state
- A school identification card with a photograph
- A voter registration card
- A U.S. military card or draft record
- An identification card issued by federal, state, or local government agencies or entities
- A Military dependent's identification card
- A Native American tribal document
- A United States Coast Guard "Merchant Mariner" Card or
- A driver's license issued by a Canadian government authority.

To learn about exceptions for individuals under age 16 who are unable to produce one of the aforementioned documents, or for employees who may be handicapped, please visit our web site at uscis.gov.

Frequently Asked Questions

- ☐ [Which List B documents are acceptable?](#)
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Which List B documents are acceptable?

Certain documents are only acceptable as evidence to establish identity for individuals 16 years of age or older. If a prospective employee shows an employer one of the following documents, the individual must also show the employer a separate document that establishes employment eligibility. Documents that are acceptable for establishing identity include:

- A state driver's license or identification card, containing a photograph or descriptive information;
- A school identification card with a photograph;
- A voter's registration card;
- A U.S. military card or draft record;
- An identification card issued by federal, state, or local government agencies or entities, containing a photograph or descriptive information;
- A military dependent's identification card;
- A Native American tribal document;
- A United States Coast Guard "Merchant Mariner" Card; and
- A driver's license issued by a Canadian government authority.

For individuals under the age of 18 who are unable to present a document listed above:

- A school record or report card;
- A clinic, doctor, or hospital record; and
- A day-care or nursery school record.

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Information about documents that are acceptable to establish employment eligibility only

INTRODUCTION

Certain documents are acceptable evidence only to establish employment eligibility. If a prospective employee shows an employer one of the following documents, the individual must also show a separate document that establishes identity.

Acceptable documents to establish employment eligibility include:

- A social security card, unless the card has the words, “not valid for employment purposes,” printed on its face;
- Form FS-545, a “Certification of Birth Abroad” issued by the Department of State;
- Form DS-1350, a “Certification of Birth Abroad” issued by the Department of State;
- An original or certified copy of a birth certificate issued by a State, county, municipal authority, or outlying possession of the United States bearing an official seal;
- A Native American tribal document;
- A United States Citizen Identification Card;
- A USCIS Form I-197;
- A USCIS Form I-179 identification card for use by a resident citizen of the United States; or
- An unexpired employment authorization document issued by USCIS that does not contain a photograph.

To establish initial employment eligibility, a refugee may use Form I-94. Then, within 90 days of being hired, the refugee must present either: an unexpired Form I-766, an unexpired Form I-688B, or a Social Security card that does not display any employment restrictions. The refugee must also present a document which establishes the individual’s identity. If an individual has been granted asylum, the individual must present a Form I-94, which indicates that the bearer has been granted asylum or “asylee” status. Even though it is not required by immigration law, an asylee should also present a Social Security card, which does not display any employment restrictions, within 90 days of being hired.

The Social Security Administration has improved the security features of Social Security Cards. The new security features are reflected in the October 2007 version of the card. However, all prior versions of the Social Security Card are still valid and may continue to be used.

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Frequently Asked Questions

- ❑ [Which List C documents are acceptable?](#)
- ❑ [Is a receipt showing that the employee has filed for a new employment authorization document acceptable as evidence of continuing eligibility for employment?](#)
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Which List C documents are acceptable?

Certain documents are only acceptable as evidence to establish employment eligibility. If a prospective employee shows an employer one of the following documents, the individual must also show a separate document that establishes identity. Documents that are acceptable for establishing employment eligibility are:

- A Social Security card, unless the card has the words, "not valid for employment purposes," printed on its face;
- Form FS-545, a "Certification of Birth Abroad," issued by the Department of State;
- Form DS-1350, a "Certification of Birth Abroad," issued by the Department of State;
- An original or certified copy of a birth certificate issued by a state, county, municipal authority, or outlying possession of the United States bearing an official seal;
- A Native American tribal document;
- A United States Citizen Identification Card, CIS Form I-197;
- An CIS Form I-179 identification card for use by a resident citizen in the United States; and
- An un-expired employment authorization document issued by DHS that does not contain a photograph.

The Social Security Administration has improved the security features of Social Security Cards. The new security features are reflected in the October 2007 version of the card. However, all prior versions of the Social Security Card are still valid and may continue to be used.

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Is a receipt showing that the employee has filed for a new employment authorization document acceptable as evidence of continuing eligibility for employment?

The employee may in certain instances use receipts instead of original documents during the Form I-9 process. If an employee's document has been lost, stolen, or damaged, then the employee can present a receipt for the application for a replacement document. The replacement document needs to be presented to the employer within 90 days of hire, or, in the case of re-verification, the date the employment authorization expires. In these cases, the previous document must still have been otherwise valid (i.e., the employee would still have been within the validity period previously granted if not lost, stolen, etc.).

It is important to note that a receipt for an application for an initial or renewal (as opposed to a replacement) USCIS Employment Authorization Document (EAD) filed on a Form I-765, Application for Employment Authorization, is NOT an acceptable document for I-9 verification purposes.

There are exceptions to this receipt rule.

- **H-1B employees, who have a new petition filed on their behalf pursuant to the American Competitiveness in the 21st Century Act, may begin working for a new employer once that employer has filed a new petition for the employee.**
- **The following nonimmigrant visa categories may continue to work for 240 days after the expiration of their current period of stay, as long as an extension of stay has been filed with USCIS: A-3, E, G-5, H, I, J-1, L-1, O-1, O-2, P-1, P-2, P-3, R, and TN.**

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Information about how to properly retain completed copies of the Form I-9

INTRODUCTION

After Form I-9 has been completed by the employer and the employee, USCIS suggests that the employer and the employee should review it for completeness. The employer should store all I-9 Forms separately from other employee personnel records.

If the employee has a temporary work authorization, the employer should track its expiration date. The employer should periodically review all I-9 Forms to ensure that they comply with their expiration dates. Employers should store the I-9 Forms for terminated employees in a separate file.

The employer must retain Form I-9 for the following periods of time:

An employer must retain Form I-9 for three years after the hire date or one year after the date of the employee's termination, whichever is later

A recruiter or a "referrer for a fee" must retain the Form I-9 for three years after the date of hire.

Frequently Asked Questions

- ❑ [What do I do with the Form I-9 after it is completed?](#)
- ❑ [How should the Form I-9 be stored?](#)
- ❑ [Can I store Forms I-9 electronically?](#)
- ❑ [How long should the Form I-9 be retained?](#)
- ❑ [If an employee is fired or employment is terminated, am I still required to keep the Form I-9?](#)
- ❑ [Can I make and keep copies of the documents used in Section 2 of the Form I-9?](#)
- ❑ [Would DHS ever audit employers for the employees' Forms I-9?](#)
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- ❑ [What do I need to do if I notice an error on the Form I-9 and need to revise it?](#)
- ❑ [What are the penalties for knowingly hiring aliens without proper work authorization or unauthorized aliens?](#)
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What do I do with the Form I-9 after it is completed?

The employer must retain the Form I-9 for each employee either for three years after the date of hire or for one year after employment is terminated, whichever is later.

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How should the Form I-9 be stored?

While not required by law or regulation, it is suggested that the original Form I-9 should be filed in a separate file away from the employee's personnel file.

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Can I store Forms I-9 electronically?

On April 28, 2005, Public Law 108-390 went into effect thereby allowing employers to sign and store Forms I-9 electronically, in addition to the prior choices of paper, microfilm or microfiche. Currently, guidelines for the electronic signature and storage of the Form I-9 can be found on the U.S. Immigration and Customs Enforcement (ICE) website: [Electronic Signature and Storage of the I-9 Employment Eligibility Verification Form](#)

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How long should the Form I-9 be retained?

The Form I-9 must be retained for a period of three years after the date of hire or one year after the date employment ends, whichever is later.

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If an employee is fired or employment is terminated, am I still required to keep the Form I-9?

Yes, you must retain the Forms I-9 for fired employees or for employees who terminate employment. These records must be kept for a period of three years after the date of hire or one year after the date employment ends, whichever is later. While not required by law or regulation, the Form I-9 may be pulled out and placed in a separate file for fired employees as well as for those employees who have terminated employment.

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Can I make and keep copies of the documents used in Section 2 of the Form I-9?

An employer may choose to keep copies of the Section 2 documents along with the Form I-9. However, if this is done, the policy should be applied to all employees. It is important that the employer be consistent in making photocopies for **all** employees, regardless of citizenship or nationality.

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Would DHS ever audit employers for the employees' Forms I-9?

Yes, DHS may randomly conduct an audit of an employer's Forms I-9. Please bear in mind that failure to comply with a DHS audit is a violation of federal law and can result in significant and costly fines or even an imposition of criminal penalties.

Completed Forms I-9 are not filed with the federal government. Instead, they must be retained by the employer in its own files and made available for inspection by DHS, the Special Counsel for Immigration-Related Unfair Employment Practices (OSC), or the Department of Labor (DOL) for three years after the date of hire or one year after the date the employee's employment is terminated, whichever is later.

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What happens if the Form I-9 is not completed when filed or if it is not retained?

An employer faces penalties of not less than \$110 and not more than \$1,100 for each employee for whom a Form I-9 was not properly completed or retained.

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What if I request additional documents to establish work authorization?

For requesting more or different documents, a fine of not less than \$110 and not more than \$1,100 will be imposed for each individual discriminated against.

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What do I need to do if I notice an error on the Form I-9 and need to revise it?

If you notice an error on the Form I-9 after it is completed, simply make the appropriate change to the error, and initial and date the change. If the employee made the error, request that the employee make the change needed. Whoever makes such a change or correction to the Form I-9 must initial and date the correction.

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What are the penalties for knowingly hiring aliens without proper work authorization or unauthorized aliens?

The following are the penalties or fines, *per* unauthorized employee, that an employer who hires or continues to employ aliens who do not have proper work authorization may face:

- First offense: not less than \$250 and not more than \$2,000 for each unauthorized alien with respect to whom the offense occurred before September 29, 1999, and not less than \$275 and not exceeding \$2,200 for each unauthorized alien with respect to whom the offense occurred on or after September 29, 1999; or
- Second offense: not less than \$2,000 and not more than \$5,000 for each unauthorized alien with respect to whom the second offense occurred before September 29, 1999, and not less than \$2,200 and not exceeding \$5,500 for each unauthorized alien with respect to whom the second offense occurred on or after September 29, 1999; or
- Subsequent offenses: not less than \$3,000 and not more than \$10,000 for each unauthorized alien with respect to whom the third or subsequent offense occurred before September 29, 1999, and not less than \$3,300 and not exceeding \$11,000 for each unauthorized alien with respect to whom the third or subsequent offense occurred on or after September 29, 1999.

Employers who fail to comply with the employment verification requirements shall be subject to a civil penalty in an amount of not less than \$100 and not more than \$1,000 for each individual with respect to whom such violation occurred before September 29, 1999, and not less than \$110 and not more than \$1,100 for each individual with respect to whom such violation occurred on or after September 29, 1999.

Any person or entity that knowingly engages in a pattern or practice of hiring, or recruiting or referring for a fee for the employment of an unauthorized alien in the United States shall be fined not more than \$3,000 for each unauthorized alien, imprisoned for not more than six months for the entire pattern or practice, or both, notwithstanding the provisions of any other federal law relating to fine levels.

As the Attorney General deems necessary, civil action may be brought in the appropriate United States District Court requesting relief, including a permanent or temporary injunction, restraining order, or other order against an employer who the Service has reasonable cause to believe is engaged in a pattern or practice of employment, recruitment, or referral in violation of law.

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Are there any penalties for unlawful discrimination?

There are penalties for unlawful discrimination by an employer against individuals who have work authorization.

In this type of case the fines would be:

- First offense: Not less than \$275 and not more than \$2,200 for each individual discriminated against;
- Second offense: Not less than \$2,200 and not more than \$5,500 for each individual discriminated against; and
- Subsequent offenses: Not less than \$3,300 and not more than \$11,000 for each individual discriminated against.

Fines for document abuse range from \$110 to \$1,100 for each victim.

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Information about E-Verify

INTRODUCTION

The use of fraudulent documents by individuals to circumvent USCIS employment verification requirements is a problem for employers in the United States. To combat this problem, USCIS and the Social Security Administration have initiated a program called E-Verify to provide employers with information to confirm the employment eligibility of prospective employees.

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Information about E-Verify

INTRODUCTION

E-Verify allows employers to remove the guesswork involved with hiring new employees. Conducted jointly by the Department of Homeland Security (DHS) and the Social Security Administration (SSA), E-Verify allows employers to use an automated Internet-based system to run employment authorization checks against DHS and SSA databases during the hiring process. In the process, it assists employers in maintaining a legal workforce and protects jobs for authorized U.S. workers. The program is administered by U.S. Citizenship and Immigration Services and is available to employers in all 50 states and the District of Columbia. This program involves a verification check in the Social Security Administration and USCIS databases for each newly hired employee, regardless of citizenship. To participate in E-Verify, employers can register online at <https://www.vis-dhs.com/EmployerRegistration>. E-Verify is free to all employers who volunteer to participate. To receive information about E-Verify, please contact the USCIS Verification Division. You may call toll free at 1-888-464-4218 or visit the USCIS website and click on the "Employer Information" link. You may fax your request for information to (202) 358-7855. Or, send your request in writing to USCIS Verification Division, 470-490 L'Enfant Plaza, Suite 8001, Washington, DC 20024. You may also contact the Social Security Administration for this information. By phone, call (410) 966-1940. Or, write to the Social Security Administration, Office of Program Benefits Policy, 6401 Security Boulevard, Baltimore, MD 21235

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[Am I required to participate?](#)

[As a federal contractor, am I required to participate in E-Verify?](#)

[Why should I consider participating in E-Verify?](#)

[How do I register for participation in E-Verify?](#)

[Our company has several hiring sites interested in participating in E-Verify. Each site will be conducting the verification process for its newly hired employees. How should these sites register?](#)

[If I sign one MOU, can I use a controlled rollout to implement E-Verify across the organization?](#)

[I am an employer with multiple hiring sites. Can one site verify everyone? How?](#)

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[What is an E-Verify Designated Agent?](#)

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[After an employer registers, how does E-Verify work?](#)

[Can I verify the immigration status of a new hire that is not a U.S. citizen?](#)

[What information is required to conduct an E-Verify initial verification?](#)

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[What is the required timeframe for conducting an employment eligibility check on a newly hired employee?](#)

[Which employees should be verified through the system?](#)

[I would like to use electronic I-9s for my employees. Does USCIS offer a system that would automatically generate E-Verify queries from the electronic I-9s?](#)

[Is there a “batch access” method in the system?](#)

[Can I terminate my participation in E-Verify at any time?](#)

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Am I required to participate?

No. E-Verify is voluntary for all employers with very limited exceptions. (Some Federal government employers and violators of certain immigration laws may be ordered to participate).

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As a federal contractor, am I required to enroll in E-Verify?

Not at this time. At this time, the E-Verify program remains a voluntary program for federal contractors. Although federal contractors are not yet required to participate in E-Verify, you are encouraged to enroll in E-Verify now to verify the employment eligibility of your new hires.

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Why should I consider participating in E-Verify?

E-Verify is currently the best means available for employers to electronically verify the employment eligibility of their newly hired employees. E-Verify virtually eliminates Social Security mismatch letters, improves the accuracy of wage and tax reporting, protects jobs for authorized U.S. workers, and helps U.S. employers maintain a legal workforce. For more information about the **Form I-9, Employment Eligibility Verification** process, please see **Fact Sheet E-3**.

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How do I register for participation in E-Verify?

You can register online for E-Verify at <https://www.vis-dhs.com/EmployerRegistration>, which provides instructions for completing the registration process. At the end of the registration process, you will be required to sign a Memorandum of Understanding (MOU) that provides the terms of agreement between you the employer, the SSA, and DHS. An employee who has signatory authority for the employer can sign the MOU. Employers can use their discretion in identifying the best method by which to sign up their locations for E-Verify. For example, an employer may choose to designate one site to perform the verification queries for newly hired employees on behalf of the entire company. Only one MOU would need to be signed for this option. An employer may also choose to have each site perform their own verification queries. This option requires each site performing verification queries to register and to submit an MOU to participate in the program.

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Our company has several hiring sites interested in participating in E-Verify. Each site will be conducting the verification process for its newly hired employees. How should these sites register?

Each site that will perform the employment verification queries must go through the registration process and sign an individual MOU.

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If I sign one MOU, can I use a controlled rollout to implement E-Verify across the organization?

Yes, you can choose which sites to enroll. However, each site that has signed an MOU must verify the status of **all** new hires for that site. A new MOU is required only for a new site performing verification queries. If a central location, which is already registered, does the verification queries, then the company would only need to amend the number of hiring sites.

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I am an employer with multiple hiring sites. Can one site verify everyone? How?

Yes, one site may verify new hires at all sites. When registering, the individual at the site that will be verifying new hires should select “multiple site registration” and give the number of sites per State it will be verifying.

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What is an E-Verify Designated Agent?

An E-Verify Designated Agent is a liaison between E-Verify and employers wishing to participate, but who choose to outsource submission of employment eligibility verification queries for newly hired employees. The E-Verify Designated Agents conduct the verification process for other employers/clients. An E-Verify Designated Agent must register on-line and sign an MOU with SSA and DHS. Once the MOU is approved, the E-Verify Designated Agent can then begin registering employers/clients who have designated it to perform the company’s verification services. Each employer/client will also be required to sign an MOU and will have a unique E-Verify client number.

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What is an E-Verify Corporate Administrator?

An employer has the option to designate an employee as a Corporate Administrator. A Corporate Administrator is someone who has management oversight authority of the employer’s hiring sites that participate in the program but generally does not perform employment eligibility verification queries. The Corporate Administrator role enables oversight of all the company sites participating in E-Verify. To become a Corporate Administrator, an individual only needs to register and does not need to sign an MOU. Once registered, this individual will be able to register company sites, add and delete users at company sites, and view reports generated by company sites. The Corporate Administrator, however, does not submit queries for verification.

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After an employer registers, how does E-Verify work?

Using an automated system, the program involves verification checks of SSA and DHS databases. The E-Verify MOU, User Manual and Tutorial contain instructions and other related materials on E-Verify procedures and requirements. Once the user has completed the tutorial, he or she may begin using the system to verify the employment eligibility of all newly hired employees.

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Can I verify the immigration status of a new hire that is not a U.S. citizen?

No. E-Verify only verifies a new hire's employment eligibility, not his or her immigration status.

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What information is required to conduct an E-Verify initial verification?

After hiring a new employee and completing the **Form I-9**, required for all new hires (regardless of E-Verify participation), one must submit a query that includes information from sections 1 and 2 of the Form I-9, including the employee's name, date of birth, Social Security account number (SSN), the citizenship status he or she attests to, an A# or I-94# (if applicable), the type of document provided on the Form I-9 to establish work authorization status and proof of identity, and its expiration date (if applicable). Response to the initial query is sent within seconds of submitting the query. Documents presented for Form I-9 identification only purposes (documents from "List B") to E-Verify employers must have a photograph.

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What is the required timeframe for conducting an employment eligibility check on a newly hired employee?

Employers must make verification inquiries within three business days of hiring.

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When may an employer initiate a query under E-Verify?

The earliest the employer may initiate a query is after an individual accepts an offer of employment and after the employee and employer complete the Form I-9. The employer must initiate the query no later than the end of three business days after the new hire's actual start date.

Although an employer may initiate the query before a new hire's actual start date, it may not pre-screen applicants and may not delay training or an actual start date based upon a tentative non-confirmation or a delay in the receipt of a confirmation of employment authorization. An employee should not face any adverse employment consequences based upon an employer's use of E-Verify unless a query results in a final non-confirmation. In addition, an employer cannot use an employment authorization response to speed up an employee's start date. This would be disparate treatment to use E-Verify results to accelerate employment for this employee compared to another who may have received a tentative non-confirmation.

For example, Company X always assigns a start-date to new employees that are two weeks after the employee has submitted an approved drug test. After the employee has accepted a job with Company X, and after the employee and Company X complete the Form I-9, the company can initiate the E-Verify query. However, the company cannot speed up or delay the employee's start-date based upon the results of the query (unless the program issues a final non-confirmation, in which case the employee should not be further employed).

Employers must verify employees in a non-discriminatory manner, and may not schedule the timing of queries based upon the new hire's national origin, citizenship status, race, or other prohibited characteristic.

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I would like to use electronic I-9s for my employees. Does USCIS offer a system that would automatically generate E-Verify queries from the electronic I-9s?

Currently, USCIS does not offer this service, but several private companies do.

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Which employees should be verified through the system?

As a participant in E-Verify, employers are required to verify all newly hired employees, both U.S. citizens and non-citizens. Employers may not verify selectively, and must verify all new hires while participating in the program. The program may not be used to prescreen applicants for employment, go back and check employees hired before the company signed the MOU, or re-verify employees who have temporary work authorization.

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Is there a “batch access” method in the system?

Yes, it is called “Web-services” and is a real-time batch method. It requires a company to develop an interface between its personal system or electronic I-9 system and the E-Verify database. For more information and help with design specifications, please contact USCIS at **1-888-464-4218**.

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Can I terminate my participation in E-Verify at any time?

Yes, you may choose to leave E-Verify at any time.

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Does participation in E-Verify provide safe harbor from worksite enforcement?

No. Participation in E-Verify does not provide protection from worksite enforcement. However, an employer who verifies work authorization under E-Verify is presumed to have not knowingly hired an unauthorized alien.

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How can I find out more about E-Verify?

To find out more about E-Verify, please visit www.dhs.gov/e-verify or contact USCIS at **1-888-464-4218**.

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Information about Other Responsibilities you may have, as an employer, under U.S. Immigration law

INTRODUCTION

Federal law prohibits discrimination in hiring a prospective employee based upon the individual's immigration status or citizenship.

WHAT INFORMATION ARE YOU SEEKING? (PLEASE CHOOSE ONE BELOW)

[Information about how to avoid discrimination against individuals who have been authorized to work in the U.S. and information about the penalties for discrimination](#)

[Information about the requirement to pay for an employee's transportation costs to return overseas if the employer dismisses the employee](#)

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Information about how to avoid discrimination against individuals who have been Authorized to work in the U.S. and information about the penalties for discrimination

INTRODUCTION

Form I-9 lists the acceptable documents that a prospective employee may provide to the employer in order to establish his eligibility to work in the United States. The prospective employee is entitled to choose the document or documents that he presents to the employer. The employer cannot demand specific documents from a prospective employee or specify which documents the individual must provide. To avoid discrimination based on an individual's immigration status or citizenship, the employer should treat all people equally when announcing a job, taking applications, performing interviews, making job offers, verifying the individual's eligibility to work, hiring of the individual, and termination of the individual's employment. U.S. Immigration law prohibits discrimination, on the basis of citizenship, against protected individuals. Protected individuals include citizens or nationals of the United States, lawful permanent residents, temporary residents, and persons who have been granted refugee or asylee status. The U.S. Department of Justice has an Office of Special Counsel. This Office investigates and prosecutes charges of unlawful employment practices related to immigration. The penalties for unlawful discrimination against individuals who have authorization to work are as follows: For a first offense: not less than \$275 and not more than \$2,200 for each individual discriminated against; for a second offense: not less than \$2,200 and not more than \$5,500 for each individual discriminated against; for subsequent offenses: not less than \$3,300 and not more than \$11,000 for each individual discriminated against.

Frequently Asked Questions

- ❑ Are there any penalties for unlawful discrimination?
- ❑ What if an employee does not have a document from List A?

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Information about the requirement to pay for an employee's transportation costs to return overseas if the employer dismisses the employee

INTRODUCTION

USCIS grants certain alien workers an H-1B, H-2B, or H-2R immigration status. If the employer dismisses an alien with such a status prior to the expiration date of the individual's authorized period of stay, the employer is required to pay the reasonable costs for the individual's return transportation abroad. If the alien employee voluntarily terminates his employment prior to the expiration date of his authorized period of stay, the alien is not considered as having been "dismissed," and the employer is not required to pay for the individual's return transportation.

Frequently Asked Questions

- ❑ [What is a U.S. employer held liable for once an H-1B, H-2B, or H-2R nonimmigrant is employed?](#)
- ❑ [What is a U.S. employer held liable for once an O-1, P-1, P-2, or P-3 nonimmigrant is employed?](#)
- ❑ [What is a U.S. employer held liable for once an H-1C, H-2A, H-3, L-1, Q-1, R-1, or TN nonimmigrant is employed?](#)

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What is a U.S. employer held liable for once an H-1B, H-2B, or H-2R nonimmigrant is employed?

Under immigration law, a U.S. employer is liable for the reasonable costs of return transportation abroad of the H-1B, H-2B, or H-2R if they terminate the nonimmigrant prior to the expiration of the period of authorized admission. However, there are other general employment responsibilities not covered by immigration law. These inquiries should be directed to the [Department of Labor](#).

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What is a U.S. employer held liable for once an O-1, P-1, P-2, or P-3 nonimmigrant is employed?

Under immigration law, both the U.S. employer and the nonimmigrant are “jointly and severally” liable for the reasonable costs of return transportation abroad of the O or P nonimmigrant if the employer terminates the nonimmigrant prior to the expiration of the period of authorized admission. However, there are other general employment responsibilities not covered by immigration law. These inquiries should be directed to the [Department of Labor](#).

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What is a U.S. employer or petitioner held liable for once an H-1C, H-2A, H-3, L-1, Q-1, R-1, or TN nonimmigrant is employed?

An employer or petitioner applying for an H-1C, H-2A, H-3, L-1, Q-1, R-1, or TN has employment responsibilities not covered by immigration law. These inquiries should be directed to the [Department of Labor](#).

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Information about the requirement to pay employees fair and equitable wages

INTRODUCTION

All workers, regardless of their immigration status, are afforded the full benefits and protections of U.S. labor laws. In certain cases, to employ foreign nationals, the employer must file a Labor Condition Application or an Application for Alien Employment Certification with the Department of Labor. On these applications, the employer must attest that, at a minimum, the employer will pay the prevailing wage for the position and the employer will maintain the working conditions that are being offered. Any petition filed on behalf of a foreign national, which requires an offer of employment, must be accompanied by evidence that the prospective United States employer has the ability to pay the proffered wage.

For further information about the employer's attestation requirement to pay fair and equitable wages, please see the [Department of Labor's Employment and Training Administration website](#).

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